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REPORT
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COPYRIGHT ROYALTY TRIBUNAL REFORM AND MISCELLANEOUS PAY ACT OF 1990

APRIL 19 (legislative day, APRIL 18), 1990.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1272 and H.R. 3046]

The Committee on the Judiciary, to which was referred the bills (S. 1272 and H.R. 3046), having considered the same, reports favorably thereon with an amendment to S. 1272 in the nature of a substitute, and recommends that the bills, as amended, do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of 1989".

SEC. 2. COPYRIGHT ROYALTY TRIBUNAL AND COPYRIGHT OFFICE.

(a) MEMBERSHIP OF THE COPYRIGHT ROYALTY TRIBUNAL; LAPSED TERMS; PAY.—Section 802(a) of title 17, United States Code, is amended to read as follows:

"(a) The Tribunal shall be composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate. The term of office of an individual appointed as a Commissioner shall be seven years, except that a Commissioner may serve after the expiration of his or her term until a successor has

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taken office. Each Commissioner shall be compensated at the rate of pay in effect for Level V of the Executive Schedule under section 5316 of title 5.".

(b) COPYRIGHT OFFICE.—Section 701 of title 17, United States Code, is amended by adding at the end the following new subsection:

"(e) The Register of Copyrights shall be compensated at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5. The Librarian of Congress shall establish not more than four positions for Associate Registers of Copyrights, in accordance with the recommendations of the Register of Copyrights. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights. Each Associate Register of Copyrights shall be paid at a rate not to exceed the maximum annual rate of basic pay payable for GS–18 of the General Schedule under section 5332 of title 5.".

SEC. 3. PAY RATES FOR PAROLE COMMISSION.

(a) CHAIRMAN.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Chairman, United States Parole Commission.".

(b) OTHER COMMISSIONERS.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

"Commissioners, United States Parole Commission (8).".

SEC. 4. PAY RATES FOR DEPUTY AND ASSISTANT COMMISSIONERS OF PATENTS AND TRADEMARKS.

Section 5316 of title 5, United States Code, is amended by adding at the end the following:

"Deputy Commissioner of Patents and Trademarks.

"Assistant Commissioner of Patents.

"Assistant Commissioner of Trademarks.".

SEC. 5. EFFECTIVE DATE; BUDGET ACT.

(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) BUDGET ACT.—Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriations Acts.

I. PURPOSE

The purpose of this legislation is to ensure the operation of the Copyright Royalty Tribunal and to provide uniformity in the compensation for high-level officials in several agencies of government. Currently, the Tribunal operates with only three of its authorized five commissioners and there is no statutory provision governing the contingency of lapsed terms. By reducing the number of commissioners from five to three and by allowing a commissioner whose term has expired to remain in office until a successor is confirmed, this legislation improves the Tribunal's efficiency. This legislation will also correct an imbalance in the pay structure of the Copyright Royalty Tribunal, and for top executives in the U.S. Copyright Office, the Patent and Trademark Office and Parole Commission. These positions are under the authorizing authority of the Judiciary Committee and are among the few left in government at this level that are still under the General Schedule (GS). By converting these positions from the obsolete GS–18 compensation level to the Executive Schedule, this legislation will enable these positions to benefit from the recommendations of the Presidential Quadrennial Pay Commission and correct existing incongruities in the current compensation system.

II. Legislative History

The House Subcommittee on Courts, Intellectual Property, and the Administration of Justice held an oversight hearing on the functioning of the Copyright Royalty Tribunal on March 16, 1989. Testimony from the chairman and two Commissioners of the Tribunal requested the introduction of legislation to assist the Tribunal to continue operations. Representative Kastenmeier, for himself; Mr. Moorhead; Mr. Crockett; Mr. Berman; Mr. Bryant; Mr. Cardin; Mr. Boucher; Mr. Sangmeister; Mr. Hughes; and Mr. Synar introduced H.R. 3046 on July 28, 1989.

The full House Judiciary Committee considered H.R. 3046 on October 3, 1989. After general debate, Mr. Moorhead offered an amendment to add the Parole Commissioners, the Patent and Trademark Office, the Register of Copyrights and the three Associate Registers of Copyrights to the bill, changing their current salary classifications. The amendment passed by voice vote. A quorum being present, the committee by voice vote with no opposition being heard, favorably reported H.R. 3046, as amended, to the full House.

The House considered H.R. 3046 on November 13, 1989, and passed the bill by voice vote. H.R. 3046, as amended, was received in the Senate and referred to the Committee on the Judiciary on November 15, 1989.

Senator Deconcini introduced the Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of June 6, 1989. The Patents, Coypright and Trademark Subcommittee, chaired by Senator DeConcini, held a public hearing on July 12, 1989. Several witnesses appeared, none of whom testified against the provisions of S. 1272.

The subcommittee considered S. 1272 on July 26, 1989. Senator DeConcini proposed a substitute that was unanimously approved by the subcommittee.

The Judiciary Committee unanimously favorably reported S. 1972, as amended, and H.R. 3046 on March 22, 1990. Subsequently, on March 30, 1990, the committee, by poll, agreed to strike the language of S. 1972 and substitute the text of H.R. 3046. Both bills were thus reported with identical language.

III. Discussion

THE COPYRIGHT ROYALTY TRIBUNAL

Congress created the Copyright Royalty Tribunal (Tribunal) as a small ·ndependent agency in the legislative branch as part of the General Revision of the Copyright Law of 1976. The Tribunal performs both rulemaking and adjudicatory functions. The rulemaking proceedings consist of adjusting rates for cable and satellite retransmissions, and distribution of phonorecord, jukeboxes and noncommercial educational broadcasts. Under its adjudicary functions, the Tribunal distributes royalties collected under compulsory licenses for cable- and satellite-retransmitted television signals and for jukeboxes. The Tribunal carries out these functions by holding hearings and issuing a final determination which is subject to appeal to the U.S. Court of Appeals. Every decision rendered by the

Tribunal since July 1985 has been either affirmed in all respects on appeal or not appealed at all.

NUMBER OF COMMISSIONERS

The legislative history of the Copyright Act reflects an intention that the Tribunal remain an independent agency in which the Commissioners perform all professional responsibilities themselves. Under current law, the Tribunal is authorized to have five Commissioners who are appointed to 7-year terms by the President with the advice and consent of the Senate. The Tribunal currently operates with three Commissioners, and in recent years the Congress has only provided funds for three positions.

Since 1985, the Tribunal has held three rate adjustment proceeding and currently has several others pending before it. Since that time, the Tribunal has also concluded six jukebox distribution proceedings and five cable distribution proceedings and is presently engaged in a current cable distribution hearing. Seven of these decisions have been appealed to the courts of appeals and all have been affirmed.

The Tribunal's only staff consists of the three commissioners, a personal assistant to each commissioner and a general counsel. The Tribunal has been able to operate effectively at this level of staffing, however, it is difficult to function with fewer members.

Furthermore, in the current situation there is a question of whether a quorum can be achieved with less than all three commissioners present. If one of the three commissioners is ill there would be only two of the five authorized members present which is less than a majority. Although never challenged by a party, the problem will be solved by reducing the number of authorized commissioners to three, so that a panel of two will clearly constitute a quorum.

LAPSED TERMS

Currently, the Tribunal's authorizing statute makes no provision for Commissioners to serve beyond their fixed terms when no replacement has been named. The enabling legislation of most other commissions provides that a commissioner will serve beyond the expiration of his or her term until a new commissioner is confirmed.

One Commissioner's term expired in September 1989 and a replacement was not confirmed until January 1990. Thus, for several months the Tribunal was forced to operate shorthanded. This is a particular strain on such a small agency because the Commissioners, assisted by only a small staff, perform most of the work themselves. While waiting for the confirmation of the new member, the Tribunal delayed its bigger proceedings so that a full complement of Commissioners could participate.

The inconvenience and inefficiencies of operating with less than three Commissioners can be avoided easily by the addition of a clause allowing a Commissioner to serve after the expiration of his or her term until a successor has taken office.

SALARY RECLASSIFICATION

The Tribunal's enabling statute sets the Commissioners salaries at the GS–18 level of the General Schedule. In 1976, at the time of authorization, GS–18 was the highest level for Civil Service employees and comparable to Executive Level V, the entry level for Presidential appointees in the executive branch. In 1978, Congress revised the "supergrade" system, supplementing it with the Senior Executive Service (SES). Since then nearly all career GS–18 positions have been converted to SES. Consequently, less than 80, mostly nonsupervisory, personnel remain at the GS–18 level in the executive branch. Because the GS–18 classification is somewhat obsolete, the last two recommendations of the President's Quadrennial Pay Commission did not revise the GS–18 compensation schedule, but did propose substantial increases for both the SES and Executive Level V schedules. Although the Quadrennial Pay Commission's recommendations have not yet been implemented, the possibility exists that the Presidentially appointed Tribunal Commissioners could receive substantially less than both the entry level executive branch Presidential appointees and top Civil Service employees. In order to maintain the currently existing compensation parity, the Commissioners' compensation needs to be transferred to the Executive Level V.

THE UNITED STATES PAROLE COMMISSION

The United States Parole Commission is an independent agency within the aegis of the U.S. Department of Justice. The President appoints its nine members, one of whom is designated chairman, with the advice and consent of the Senate.

The Comprehensive Crime Control Act of 1984 (Public Law 98–473, title II, section 218(a)(5), Oct. 12, 1984, 98 Stat. 2027) abolishes the Commission. However, the Commission's powers remain in effect until November 1, 1992, as to any individual who committed a Federal criminal offense before November 1, 1987, and as to terms of imprisonment imposed before that time. Thus, although the concept of parole was eliminated from the Federal criminal justice system for crimes committed after 1987, the Parole Commission remained in effect for prisoners who committed crimes under the "old law."

The Parole Commissioners are currently compensated at the GS–18 level. Thus, they are similarly situated as the members of the Copyright Royalty Tribunal. To maintain parity with comparable positions in other agencies, the Parole Commissioners should be transferred to the Executive Level V compensation level.

THE U.S. COPYRIGHT OFFICE

The U.S. Copyright Office is a division of the Library of Congress. Under the direction of the Register of Copyrights, it administers the copyright laws and the semiconductor chip protection law of title 17 of the United States Code. The Office performs the following functions:

1. Maintains the public registry of both claims to copyright and semiconductor chip products, records documents pertain-

ing to a copyright, and administers the five compulsory license provided in the Copyright Act;

2. Provides information and technical assistance to Congress concerning policy and legislative matters relating to copyright;

3. Plays a leadership role in international copyright matters to develop policies for the improvement of international standards for the protection of intellectual property;

4. Advises the executive branch—the State Department, the Commerce Department, and the Office of the U.S. Trade Representative—in developing U.S. policies in trade-related intellectual property negotiations both in bilateral and multilateral contexts; and

5. Assists the public and the Federal judicial branch through administration of the U.S. registration system by examining claims to copyright, clarifying the statement of the claim, and refusing registration of ineligible works, thereby narrowing the issues that must be litigated and facilitating commercial transactions in copyrighted works.

The Register of Copyrights oversees several hundred employees. Three Associate Registers of Copyright assist the Register perform the Office's duties. One of these positions is currently vacant and there is a question whether the Library of Congress has sufficient authorized positions at the appropriate pay grade to fill it. The proposed legislation codifies the three Associate positions and raises their compensation from GS–17 to Executive Level V.

The Copyright Office currently faces increased responsibilities associated with the U.S. adherence to the Berne Convention and handles 42 percent more copyright claims than 10 years ago. Congress relies extensively on the Copyright Office to provide its technical expertise in the legislative process. Given the importance of intellectual property in world trade and the increasing responsibilities of the Copyright Office, the three Associate Register positions ought to be statutorily established to ensure this Office receives sufficient support to perform its mandate.

The compensation level for these positions should be comparable to their counterparts in the executive branch. To preserve equity and fairness, the Register who is the equivalent of the Commissioner of Patents and Trademarks should receive compensation at the Executive Level IV, while the three Associate Registers should be compensated at Executive Level V.

THE PATENT AND TRADEMARK OFFICE

The Patent and Trademark Office (PTO) administers the laws relating to patents and trademarks to promote industrial and technological progress in the United States and strengthen the national economy. The PTO functions include:

1. Examining patent and trademark applications, issuing patents and registering trademarks;

2. Disseminating patent and trademark information to the public; and

3. Encouraging a domestic and international climate in which intellectual property can flourish.

The PTO is under the perview of the Secretary of Commerce. A Commissioner of Patents and Trademarks, who is also an Assistant Secretary of Commerce, has overall responsibility to carry on the activities and of the Office. The Commissioner is assisted by a Deputy Commissioner who fills the Commissioner's office upon a vacancy until a Commissioner is appointed. An Assistant Commissioner of Patents manages the patent examining corps, the documentation operations and scientific library. As Assistant Commissioner of Trademarks manages the trademark registration operations. These officials all have under their supervision managers in the Senior Executive Service who are compensated at higher salary levels. A change in salary classification from the GS schedule to the Executive Schedule Level V will correct the imbalance and provide compensation comparable to other senior administrators.

IV. Vote of the Committee

On March 22, 1990, the Judiciary unanimously favorably reported S. 1972, as amended, and H. R. 3046. Subsequently, on March 30, 1990, the committee, by poll, unanimously agreed to substitute the language of H. R. 3046 for the language of S. 1972 and to report S. 1972.

V. Section-by-Section Analysis

SECTION 1

Section 1 establishes the short title of this legislation as the "Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of 1989."

SECTION 2

Section 2 amends provisions of the Copyright Act with respect to the Copyright Royalty Tribunal and the Copyright Office.

Subsection (a) amends section 802(a) of title 17 of the United States Code to change the membership on the Copyright Royalty Tribunal from five Commissioners to three and to allow a Commissioner to continue serving past the expiration of his or her term until a successor has taken office. Additionally, each Commissioner shall be compensated at Level V of the Executive Schedule under section 5316 of title 5.

Subsection (b) amends section 701 of title 17 to provide that the Register of Copyrights shall be compensated at Level IV of the Executive Schedule under section 5315 of title 5. This section also codifies that there shall be three Associate Registers of Copyright who are to be compensated at Level V of the Executive Schedule under section 5316 of title 5.

SECTION 3

Subsection (a) adds the Chairman of the U.S. Parole Commission to the list of those compensated at Executive Level IV under section 5315 of title 5.

Subsection (b) changes the compensation of the eight Commissioners of the U.S. Parole Commission from GS–18 to Executive Level V under section 5316 of title 5.

SECTION 4

This section amends section 5316 of title 5 of the United States Code, changing the compensation rate for the Deputy Commissioner of Patents currently at GS–18, the Assistant Commissioner for Patents (GS–18), and Assistant Commissioner for Trademarks (GS–17) to the Executive Schedule Level V.

SECTION 5

This section provides that this legislation becomes effective on the date of enactment and that any new spending authority be effective only to the extent as provided in appropriation acts.

VI. Cost Estimate

In accordance with paragraph 11(a), rule XXVI, of the Standing Rules of the Senate, the committee offers the Report of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 30, 1990.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1272, the Copyright Royalty Tribunal Reform Act of 1989, as ordered reported by the Senate Committee on the Judiciary, March 22, 1990. We expect that enactment of the bill would result in no cost to the federal government or to state or local governments.

S. 1272 would change the salary classification for members of the Copyright Royalty Tribunal from GS–18 to Executive Level V. In addition, the bill would reduce to three the maximum number of commissioners of the tribunal, and would allow tribunal commissioners to continue to serve after their terms expire until a successor has taken office.

The change in salary classification would have no immediate impact on the federal budget because the current salary for the new classification is the same as that for the existing one. Reducing to three the maximum number of commissioners of the tribunal would not result in savings because, since 1984, the tribunal has been composed of only three members. Other provisions of the bill would have no budget impact.

If you wish further details on this estimate, we will be pleased to provide them. The CBO contact is Douglas Criscitello, who can be reached at 226–2860.

Sincerely,

Robert F. Hale
(For Robert D. Reischauer.)

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 29, 1990.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3046, the Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of 1989, as ordered reported by the Senate Committee on the Judiciary, March 22, 1990. We expect that enactment of the legislation would cost the federal government about $10,000 annually.

H.R. 3046 would change the salary classification for members of the Copyright Royalty Tribunal and the United States Parole Commission, for the Deputy and Assistant Commissioners of Patents and Trademarks, and for the Register of Copyrights and the Associate Registers of Copyrights. In addition, H.R. 3046 would reduce to three the maximum number of commissioners of the tribunal, and would allow tribunal commissioners to continue to serve after their terms expire until a successor has taken office.

Most of the changes in salary classifications would not have a significant impact on the federal budget because most of the positions would continue to be compensated at their current rate. However, the salary of the Register of Copyrights and the Chairman of the Parole Commission each would be increased by $5,400 annually. Reducing to three the maximum number of commissioners of the tribunal would not result in savings because, since 1984, the tribunal has been composed of only three members. Other provisions of the act would have no budget impact.

No costs would be incurred by state or local governments as a result of enactment of this legislation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO contact is Douglas Criscitello, who can be reached at 226–2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer.)

VII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the act will not have direct regulatory impact.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

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CHAPTER 7—COPYRIGHT OFFICE

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§ 701. The Copyright Office: General responsibilities and organization

(a) * * *

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(e) The Register of Copyrights shall be compensated at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5. The Register of Copyrights shall be assisted in the performance of his or her duties by three Associate Registers of Copyrights who shall each be compensated at the rate of pay in effect for level V of the Executive Schedule under section 5316 of title 5.

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CHAPTER 8—COPYRIGHT ROYALTY TRIBUNAL

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§ 802. Membership of the Tribunal

[(a) The Tribunal shall be composed of five commissioners appointed by the President with the advice and consent of the Senate for a term of seven years each; of the first five members appointed, three shall be designated to serve for seven years from the date of the notice specified in section 801(c), and two shall be designated to serve for five years from such date, respectively. Commissioners shall be compensated at the highest rate now or hereafter prescribe for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).]

(a) The Tribunal shall be composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as a Commissioner shall be seven years, except that a Commissioner may serve after the expiration of his or her term until a successor has taken office. Each Commissioner shall be compensated at the rate of pay in effect for level V of the Executive Schedule under section 5316 of title 5.

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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Subchapter II—Executive Schedule Pay Rates

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§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

* * * * * * *

Chairman, United States Parole Commission.

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Agricultural Marketing Service, Department of Agriculture.

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Commissioners, United States Parole Commission (8).
Deputy Commissioner of Patents and Trademarks.
Assistant Commissioner for Patents.
Assistant Commissioner for Trademarks.

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